APPENDIX A.

Judgment of the Appellate Department of the Superior Court of the State of California for the County of Riverside.

In the Superior Court of the State of California, in and for the County of Riverside (Sitting as an Appellate Department).

The People of the State of California, Plaintiff, and Respondent, vs. Seymour Buxbom, Defendant and Appellant. No. A-220.

DECISION ON APPEAL

Good cause appearing, the judgment of the Municipal Court of the Riverside Judicial District, County of Riverside, State of California, is hereby affirmed.

Dated: April 5, 1968.

John G. Gabbert
John Neblett
Warren E. Slaughter
Judges of the Appellate Court.

Filed April 8, 1968.

APPENDIX B.

Constitutional and Statutory Provisions Involved.

1. The provisions of Article VI, Clause 2, of the United States Constitution are:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

2. The pertinent provisions of Article I, §8, of the United States Constitution are:

> "Congress shall have power . . . to regulate commerce . . . among the several States . . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . ."

3. The pertinent provisions of Article I, §10, of the United States Constitution are:

> "No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

4. The pertinent provisions of the Fifth Amendment to the United States Constitution are:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

5. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

6. The pertinent provisions of 23 U.S.C.A. 131 (Pub. L. 89-285, Title I §101, October 22, 1965, 79 Stat. 1028) are:

> §*131. Control of outdoor advertising*
>
> (a) The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.
>
> (b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the erection and maintenance along the Interstate System and the primary system of outdoor advertising signs, displays, and devices which are within six hundred and sixty feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of

the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that after January 1, 1968, such signs, displays, and devices shall, pursuant to this section, be limited to (1) directional and other official signs and notices, which signs and notices shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historical attractions, which are required or authorized by law, which shall conform to national standards hereby authorized to be promulgated by the Secretary hereunder, which standards shall contain provisions concerning the lighting, size, number, and spacing of signs, and such other requirements as may be appropriate to implement this section, (2) signs, displays, and devices advertising the sale or lease of property upon which they are located, and (3) signs, displays, and devices advertising activities conducted on the property on which they are located.

(d) In order to promote the reasonable, orderly and effective display of outdoor advertising while remaining consistent with the purposes of this section, signs, displays, and devices whose size, lighting and spacing, consistent with customary use

is to be determined by agreement between the several States and the Secretary, may be erected and maintained within six hundred and sixty feet of the nearest edge of the right-of-way within areas adjacent to the Interstate and primary systems which are zoned industrial or commercial under authority of State law, or in unzoned commercial or industrial areas as may be determined by agreement between the several States and the Secretary. The States shall have full authority under their own zoning laws to zone areas for commercial or industrial purposes, and the actions of the States in this regard will be accepted for the purposes of this Act. Nothing in this subsection shall apply to signs, displays, and devices referred to in clauses (2) and (3) of subsection (c) of this section.

(e) Any sign, display, or device lawfully in existence along the Interstate System or the Federal-aid primary system on September 1, 1965, which does not conform to this section shall not be required to be removed until July 1, 1970. Any other sign, display, or device lawfully erected which does not conform to this section shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

(f) The Secretary shall, in consultation with the States, provide within the rights-of-way for areas at appropriate distances from interchanges on the Interstate System, on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and

maintained. Such signs shall conform to national standards to be promulgated by the Secretary.

(g) Just compensation shall be paid upon the removal of the following outdoor advertising signs, displays, and devices—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully on any highway made a part of the interstate or primary system on or after the date of enactment of this subsection and before January 1, 1968, and

(3) those lawfully erected on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(B) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

(i) In order to provide information in the specific interest of the traveling public, the State high-

way departments are authorized to maintain maps and to permit informational directors and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable.

(j) Any State highway department which has, under this section as in effect on June 30, 1965, entered into an agreement with the Secretary to control the erection and maintenance of outdoor advertising signs, displays, and devices in areas adjacent to the Interstate System shall be entitled to receive the bonus payments as set forth in the agreement, but no such State highway department shall be entitled to such payments unless the State maintains the control required under such agreement or the control required by this section whichever control is stricter. Such payments shall be paid only from appropriations made to carry out this section. The provisions of this subsection shall not be construed to exempt any State from controlling outdoor advertising as otherwise provided in this section.

(k) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section.

(l) Not less than sixty days before making a final determination to withhold funds from a State

under subsection (b) of this section, or to do so under subsection (b) of section 136, or with respect to failing to agree as to the size, lighting, and spacing of signs, displays, and devices or as to unzoned commercial or industrial areas in which signs, displays, and devices may be erected and maintained under subsection (d) of this section, or with respect to failure to approve under subsection (g) of section 136, the Secretary shall give written notice to the State of his proposed determination and a statement of the reasons therefor, and during such period shall give the State an opportunity for a hearing on such determination. Following such hearing the Secretary shall issue a written order setting forth his final determination and shall furnish a copy of such order to the State. Within forty-five days of receipt of such order, the State may appeal such order to any United States district court for such State, and upon the filing of such appeal such order shall be stayed until final judgment has been entered on such appeal. Summons may be served at any place in the United States. The court shall have jurisdiction to affirm the determination of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the United States court of appeals for the circuit in which the State is located and to the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254. If any part of an apportionment to a State is withheld by the Secretary under subsection (b) of this section or subsection (b) of

section 136, the amount so withheld shall not be reapportioned to the other States as long as a suit brought by such State under this subsection is pending. Such amount shall remain available for apportionment in accordance with the final judgment and this subsection. Funds withheld from apportionment and subsequently apportioned or reapportioned under this section shall be available for expenditure for three full fiscal years after the date of such apportionment or reapportionment as the case may be.

(m) There is authorized to be appropriated to carry out the provisions of this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.

7. The pertinent provisions of 23 U.S.C.A. 136 (Pub. L. 89-285, Title II §201, October 22, 1965, 79 Stat. 1030) are:

(a) The Congress hereby finds and declares that the establishment and use and maintenance of junkyards in areas adjacent to the Interstate System and the primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty.

(b) Federal-aid highway funds apportioned on or after January 1, 1968, to any State which the Secretary determines has not made provision for effective control of the establishment and main-

tenance along the Interstate System and the primary system of outdoor junkyards, which are within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of the system, shall be reduced by amounts equal to 10 per centum of the amounts which would otherwise be apportioned to such State under section 104 of this title, until such time as such State shall provide for such effective control. Any amount which is withheld from apportionment to any State hereunder shall be reapportioned to the other States. Whenever he determines it to be in the public interest, the Secretary may suspend, for such periods as he deems necessary, the application of this subsection to a State.

(c) Effective control means that by January 1, 1968, such junkyards shall be screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or shall be removed from sight.

(d) The term "junk" shall mean old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(e) The term "automobile graveyard" shall mean any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(f) The term "junkyard" shall mean an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(g) Notwithstanding any provision of this section, junkyards, auto graveyards, and scrap metal processing facilities may be operated within areas adjacent to the Interstate System and the primary system which are within one thousand feet of the nearest edge of the right-of-way and which are zoned industrial under authority of State law, or which are not zoned under authority of State law, but are used for industrial activities, as determined by the several States subject to approval by the Secretary.

(h) Notwithstanding any provision of this section, any junkyard in existence on the date of enactment of this section which does not conform to the requirements of this section and which the Secretary finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

(i) The Federal share of landscaping and screening costs under this section shall be 75 per centum.

(j) Just compensation shall be paid the owner for the relocation, removal, or disposal of the following junkyards—

(1) those lawfully in existence on the date of enactment of this subsection,

(2) those lawfully along any highway made a part of the interstate or primary system on or

after the enactment of this subjection and before January 1, 1968, and

(3) those lawfully established on or after January 1, 1968.

The Federal share of such compensation shall be 75 per centum.

(k) All public lands or reservations of the United States which are adjacent to any portion of the interstate and primary systems shall be effectively controlled in accordance with the provisions of this section.

(l) Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to outdoor junkyards on the Federal-aid highway systems than those established under this section.

(m) There is authorized to be appropriated to carry out this section, out of any money in the Treasury not otherwise appropriated, not to exceed $20,000,000 for the fiscal year ending June 30, 1966, and not to exceed $20,000,000 for the fiscal year ending June 30, 1967. No part of the Highway Trust Fund shall be available to carry out this section.

8. Section 401 of Pub. Law 89-285 (Title IV, October 22, 1965, 79 Stat. 1033; See, Historical Note under 23 U.S.C.A. 131) provides:

"Nothing in this Act or the amendments made by this Act shall be construed to authorize private property to be taken or the reasonable and existing use restricted by such taking without just compensation as provided in this Act."

9. The pertinent provisions of the California Outdoor Advertising Act (Collier-Z'berg Act of 1967) (Stats. 1967, c. 1408) are:

(Stats. 1967, c. 1408, §1)—

It is the intention of the Legislature, in enacting this act, to provide for the effective control of outdoor advertising required by the Highway Beautification Act of 1965, Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, and particularly subdivisions (c) and (j) thereof. It is the intention of the Legislature to require that those segments of highways located in this state which are hereinafter referred to as penalty segments and bonus segments conform to the controls required by the said Highway Beautification Act of 1965 and that the bonus segments conform in addition to the controls required by the Federal-aid Highway Act of 1958, Section 131 of Title 23 of the United States Code, as in effect before October 22, 1965, and the Collier-Z'berg Act, Chapter 128, Statutes 1964 (1st Ex. Sess.), and by the Agreement for Carrying Out the National Policy Relative to Advertising Adjacent to the National System of Interstate and Defense Highways heretofore entered into pursuant to the said two acts between the United States of America, represented by the Secretary of Commerce, acting through the Federal Highway Administrator and the State of California, acting through the Director of Public Works, to the extent that the said latter controls are "stricter", within the meaning of the Highway Beautification Act of 1965, subdivision (j) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965.

California Business and Professions Code §5288.2a (Stats. 1967, c. 1408, §20)—

> Any advertising display located within 660 feet of the edge of the right-of-way of, and the copy of which is visible from, any penalty segment, or any bonus segment described in Section 5288.1 which display was lawfully maintained in existence on the effective date of this section but which was not on that date in conformity with the provisions of this article, may be maintained, and shall not be required to be removed until July 1, 1970. Any other sign which is lawful when erected, but which does not on January 1, 1968, or any time thereafter, conform to the provisions of this article, may be maintained, and shall not be required to be removed, until the end of the fifth year after it becomes nonconforming; provided that this section shall not apply to advertising displays adjacent to a landscaped freeway.

California Business and Professions Code §5288.3a (Stats. 1967, c. 1408, §21)—

> Each removal ordered by the director, on or after the effective date of this section, of any of the following advertising displays which is not as of that date in conformity with the provisions of this article shall be deemed a removal under Section 5288.2a and shall be deemed to constitute a taking, within the meaning of the Highway Beautification Act of 1965, subdivision (g) of Section 131 of Title 23 of the United States Code, as in effect October 22, 1965, of all right, title, and interest, including any leasehold interest, of the owner of

the advertising display and of the right of the owner of the real property on which the advertising display is located to erect and maintain such advertising display thereon:

(a) Advertising displays lawfully in existence on October 22, 1965.

(b) Advertising displays on real property adjoining a highway made an interstate highway or a primary highway between October 21, 1965, and January 1, 1968, which were lawfully in existence on the date the highway was so classified.

(c) Signs lawfully in existence on, or lawfully erected on or after, January 1, 1968.

If federal law requires the states to pay just compensation with regard to the removal, on or after July 1, 1970, or the end of the fifth year after an advertising display becomes nonconforming, as the case may be, of such advertising displays, owners of such advertising displays which are removed pursuant to this article or owners of the land upon which such displays are located, or both, whichever way the federal law is interpreted, shall be paid just compensation. The sole intent of the Legislature in enacting this paragraph is to comply with federal law, and it is otherwise not the intent of the Legislature to in any manner relinquish any of its powers relating to the removal of advertising displays under the police power.

California Business and Professions Code §5288.5a (Stats. 1967, c. 1408, §26)—

If compensation is required by federal law, as described in the last paragraph of Section 5288.3a,

no advertising display shall be required to be removed pursuant to Section 5288.2a unless and until federal funds for the federal share of compensation therefor, to-wit, 75 percent, required by subdivision (g) of Section 131 of Title 23 of the United States Code have been appropriated by the federal government and made immediately available to the director and notification of such appropriation and immediate availability has been received by the director. This section shall not apply to the removal of any advertising display for which no federal share is payable.

10. Zoning Ordinance 348 of the County of Riverside provides in pertinent part as follows:

ARTICLE III

M-3 ZONE (REGULATED INDUSTRIAL)

All the unincorporated territory of the County which is not included under the terms of this ordinance in any other zone is hereby designated and classified as M-3 Zone.

* * * *

SECTION 3.1 USES PERMITTED.

(a) Any use permitted in Zones M-4, A-2, and W-2, except outdoor advertising signs or structures not appurtenant to a permitted use.

* * * *

ARTICLE XVIII
GENERAL PROVISIONS

SECTION 18.6. NONCONFORMING BUILDING AND USES. The following regulations shall apply to all non-conforming buildings and uses existing on the effective date [October 22, 1960] of this ordinance:

(a) Any nonconforming building or use may be continued and maintained for periods of time set forth in subdivision (b) of this section provided there are no structural alterations except as provided in Sections 18.7 and 18.8 of this ordinance. Agricultural uses not involving the erection or maintenance of permanent improvements inconsistent with the zoning shall not be subject to the operation of this section.

(b) A nonconforming use may be maintained for the following periods of time;

* * * *

3. Outdoor advertising, 5 years.

* * * *

SECTION 18.8. RECONSTRUCTION OF DAMAGED NONCONFORMING BUILDINGS. The provisions of this ordinance shall not prevent the reconstruction, repairing or rebuilding and continued use of any non-conforming building or structure damaged by fire, explosion or acts of God or the enemy subsequent to the effective date of this ordinance, wherein the cost of such reconstruction, repairing or rebuilding does not exceed seventy-five (75) per cent of the reasonable value of such building or structures at the time such damage occurred. Reasonable value shall be as determined by the Commission.

* * * *

ARTICLE XXII
ENFORCEMENT, LEGAL PROCEDURE AND PENALTIES

* * * *

SECTION 22.5. PENALTIES. Any person, firm or corporation violating any of the provisions of this ordinance or of any permit or exception granted hereunder shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the County Jail not to exceed six (6) months, or by both such fine and imprisonment. Each separate day or any portion thereof during which any violation of this ordinance occurs or continues shall be deemed to constitute a separate offense and upon conviction therefor shall be punishable as herein provided.

* * * *

ARTICLE XXIV
AUTHENTICATION

It is hereby expressly provided and declared that this ordinance shall take effect thirty (30) days from and after its passage, and prior to the expiration of fifteen (15) days from the passage thereof shall be published once in the Riverside Enterprise, a newspaper of general circulation, printed and published in the County of Riverside, together with the names of the members of the Board of Supervisors voting for and against the same.

ADOPTED: September 22, 1960